IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6998 OF 2004

Shri Jagdeep Ishwar Mulani .... Petitioner

Versus

Mrs Jalpa Mulani .... Respondent

..

Ms Anikita Sawant i/b Mr.A.V.Anturkar for Petitioner

Mr.Rajesh More for Respondent

CORAM : A.S.Oka, J

DATE: 10th December,2004

P.C.:

1. Rule. Respondent waives service. Petition is forthwith taken up for final hearing.

2. The challenge in this petition filed by the husband against the respondent-wife is to the order of interim maintenance passed by the Family Court. Pune. By the impugned order dated 29th April, 2004 the learned Judge of the Family Court No.2 Pune directed the petitioner to pay a sum of Rs.1,500/- per month for the respondent and Rs.1500/- per month for her minor son from the date of application dated 24th December, 2003.

3. Learned counsel for the petitioner submitted that even in October, 2003 the total salary of the petitioner was Rs.10,080/- and after deduction of Rs.2,195/- per month, he was receiving only Rs.7,885/-. Learned counsel further submitted that the petitioner was required to pay Rs.2400/- per month by way of rent for the premises occupied by the respondent and minor son. A submission is made that thus the total amount which the petitioner will be required to pay is Rs.5,400/- taking into account the rent payable in respect of the premises. Learned counsel further submitted that it is impossible for the petitioner to survive in the balance amount of Rs.2,400/-per month. Reliance was placed by the learned counsel on various salary slips which are annexed to the petition.

4. Learned counsel appearing for the respondents submitted that the maintenance amount awarded by the Family court is just and reasonable and no intereference was called for.

5. I have considered the rival submissions. The salary slip of the petitioner for October, 2003 shows that after dedeuctions of Rs.2,195/- a sum of Rs.7,885/- is payable to the petitioner. The deduction includes a sum of Rs.964/- payable towards the insurance premium. It is doubtful whether the said deductions can be considered while computing the quantum of maintenance. It is alsonecessary to see the averments made by the petitioner in the affidavit filed in this petition. In paragraph no. 3 of the said affidavit, it is stated that the petitioner is required to pay for the time being Rs.1800/- by way of rent of the premises in which the respondent is residing. Thus, taking the case of the petitioner at the highest, and taking his net income as Rs.7,885/- he will be required to spend a sum of Rs.4,800/-on his wife and minor child. While the balance amount of Rs.3000/- will be left with the petitioner. Therefore, in my view the quantum of interim maintenance fixed by the Family Court needs no interference. It is to be seen here that the amount of interim maintenance is made payable from 24th December, 2003 though the order is passed on 29th April, 2004. In my view, interest of justice require that interim maintenance fixed by the impugned order should be made payable from 1st May,2004 and for the period from 24th December, 2003 to 30th April, 2004 the petitioner will be liable to pay interim maintenance of Rs.1000/- per month to the respondent and Rs.1000/- per month to the minor son.

6. Hence, I pass the following order :

> (i) The impugned order is modified. The interim maintenance of Rs.1500/- per month for the respondent and interim maintenance of Rs.1500/- per month for the minor son will be payable by the petitioner w.e.f. 1st May, 2004. For the period between 24th December, 2003 to 29th March, 2004 the petitioner will be liable to pay maintenance at the rate of Rs.1000/-per month for the respondent and Rs.1000/- per month for the minor son .

(ii) If the petitioner has paid the interim maintenance of Rs.1500/- p.m. each to the respondent and to the minor son from 24th December, 2003 to 30th April, 2004, the petitioner will be entitled to the necessary adjustment.

(iii) Subject to the modification made above, the impugned order is confirmed.

(iv) Petition is disposed of in the above terms.

(v) This court had directed the petitioner to deposit Rs.5000/- in this court. Office noting shows that the said amount has been deposited. The respondent will be at liberty to withdraw the same for meeting the costs of this petition.

Parties to act on an authenticated copy of this order.

A.S.OKA, J